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No.98 732

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

POLARIS INSURANCE COMPANY, LTD, a foreign corporation

Petitioner

vs.

CHARLES J. BRUNET, PLAINTIFF

Respondent

MAGNOLIA HOLDINGS, INC.

Respondent

On Petition for Writ of Certorari to the Supreme Court and the Fifth Circuit Court of Appeal of the State of Louisiana

REPLY TO RESPONSE TO PETTION

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I STATEMENT OF THE CASE

Respondents Brunet's and Magnolia's statement of the case, although factual, does not reach the issues developed in the petition. Polaris' statement of the case is more meaningful to this court and is the version that this court should consider.

II JURISDICTION

This court may review Polaris application for Writ of Certiorari on the basis of 28 U.S.C. § 1257, which allows a litigant to seek certiorari in instances where a final Judgment has been rendered by the highest court of a state. The judgments herein have been reviewed by the highest court in the State of Louisiana as final judgments. La. CCC Art 2166(A). Louisiana does not provide for appeal in the traditional sense but provides instead for Writ of Certiorari. The due process issue of jurisdiction may be raised at any stage of the proceedings and was raised at all stages below.

Respondent's position is that there is no final judgment. Polaris pleadings have been stricken from the record. There will be no trial on the merits. This court may review Polaris petition under the death knell doctrine. Nothing more can be done by Polaris.

III FEDERAL ISSUES

Denial of Due Process is a Federal Issue which is subject to application for a Writ of Certioari. Polaris has cited the failure of due process in response to Rule 10 requiring that the applicant state the **CONSTITUTIONAL AND STATUTORY PROVISI0NS INVOLVED**, Polaris Petition for Writ of Certioari, Pg. 2:

"Due Process and Equal Protection of the Law in that the Courts of the State of Louisiana, under La. Civ. Code Ann. Art. 9, is a clear language state, the Louisiana courts have rewritten the law and have taken upon themselves the power to establish public policy which is reserved to the legislature. La. R.S. Sect. 22:611 exempts Polaris from the requirements of contract as prescribed by the State of Louisiana, La. R.S. 22:1249 and La. R.S. 22:1269 exempt Polaris from the requirements of Posting Bond and from the Prohibitions of La. R.S. 1254 and 1255 regarding use of the Louisiana Courts. C.C. Arts. 1, 2 and 3 prohibit the courts from establishing public policy and reserve that power to the legislature. La. Code of Civ. Pro. art. 1155 required service of supplementary matter, Local Rules of Court for the Twenty-Fourth District of Louisiana, Parish of Jefferson CIVIL RULE XVI NOTICE Local rules CIV RULE XVII EXHIBITS required service at least 72 hours prior to hearing of the exhibits used in court upon which the judgment was based. There was no service, and no jurisdiction, thus the court orders are invalid."

IV FORM vs. SUBSTANCE

Respondents argue form over substance and matters of draftsmanship rather than real issues. Orders or judgments issued without jurisdiction, failure of notice requirements, violation of separation of powers and missapplication of statutes are all failure of due process and violation of equal protection of law. Polaris satisfaction of this court's requirement for citation of Constiutional provisions and statutes

involved clearly satisfies Polaris' duty to raise Constitutional or federal question in this court. That the errors raised in he courts below are, in substance,due process violations satisfies the federal question requirement.

Respondent has not addressed the real issues herein because They cannot successfully do so and thus resort to procedural agrument only.

The record provided in Polaris Appendix is complete. It establishes without doubt that the courts below denied Polaris due process at nearly all levels. Proof thereof is the result of the supervisory order of the Louisiana Supreme Court and the result thereof in the Fifth Circuit Court of Appeal of the State of Louisiana.which reversed nearly all of the District Court's rulings. The Fifth Circit Court of Appeals could not have ruled in favor of Respondent without usurping the powers of the legislature and the plain language interpretation of law required by the Constitution and statutes of the State of Louisiana.

V THE ERRORS CITED BY POLARIS CONSTITUTE DENIAL OF DUE PROCESS AND ARE JURSDICTIONAL IN NATURE

Taking of an important right without due process is prohibited by the 14th Amendment to the U.S. Constitution.

The right ultimately denied was a trial on the issues rather than a default by the court.

(a) **Jurisdiction:** The court must have jurisdiction over the parties and the subject matter of the action; i.e., the case must be one which the court is empowered to consider, and the parties must be given notice of the proceeding. Scott v. Neal, 154 U.S. 34, 14 S.Ct. 1108, 1112, 38 L.Ed. 896, 901 (1894).

(b) **Notice and Opportunity for Hearing**: The parties must have reasonable notice and an opportunity for hearing. Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14, 20, 53 L.Ed. 97, 111 (1908); Griffin v. Griffin, 327 U.S. 220, 66 S.Ct. 556, 560, 90 L.Ed. 635, 640; (1946). 16A Am.Jur.2d, Constitutional Law §827 et seq.

(c) **Fairness of Hearing**: The right to a hearing includes the right to produce evidence and to cross-examine adverse witnesses. 16A Am.Jur. 2d, Constitutional Law §841 et seq.

In its original brief to the Fifth Circuit Court of Appeal filed on april 23, 1997 Poaris provided the following assignments in error:

A. The trial court committed error in ruling that:
The Insurance Code of the State of Louisiana requires a non admitted insurer to post security by the authority of LA -R. S. 22:1245 and 1255. ***[Denial of rights established by law is denial of due process.]***

B. The court erred in that:
The adverse presumptions are not supported by the law and are in violation of the equal protection clause and due process clause of the constitution of the United States. *[Denial of due process is stated directly herein as not supported by law.]*

C. The District Court erred in that:
The Motion to Strike Polaris' Pleadings and to Order Polaris to Post Security was decided in consideration of a memorandum and exhibits thereto that were ineffective in that the memorandum was improperly served and the exhibits were not served. ***[Failure to serve moving papers giving notice is denial of due process.]***

D. The Court erred in issuing:
The Order of October 25, 1996 that Polaris post a security bond in court by 8:3 0 a.m. on October 28, 1996 which was impossible to comply with. ***[Unfairness of judicial proceedings is a denial of due process.]***

E. The Court erred in issuing:
The Order of Sanctions for Failure to Appear Pursuant to Joint Debtor Rule is void for lack of jurisdiction. ***[Judicial action beyond the jurisdiction of the court is denial of due process.]***

F. The Court erred in re:
Jurisdiction of the District Court to issue an Order for examination of debtor may be issued only if based on a valid judgment. Court has no jurisdiction based on invalid judgment. ***[Process or orders based on invalid judgment is denial of due process.]***

G. The Court committed error:
In it's denial of Polaris' Motion to Amend Answer to allege that the MAG II was not a vessel in navigation at the time plaintiff was injured. ***[This issue was not argued in Polaris petition.]***

On June 13, 1997, Polaris then filed a Writ with the Louisiana Supreme Court. In that Writ, Polaris made following Assignments of Error:

1. The Fifth Circuit Court of Appeals should not have dismissed Polaris appear (sic appeal) regarding the contempt citation and fine for failure to appear for Joint Debtor Rule. ***[This merged into Polaris' reapplication to the Fifth Circuit Court of Appeal]***

2. On October 29, 1996, there was no pending direct contempt upon which fines of could issue without a show cause order. The only contempt was an indirect contempt committed

outside the presence of the Court. ***[The court lacked jurisdiction because the contempt was indirect,thus its action was denial of due process.]***

3. On October 29, 1996, there was no noticed motion pending to issue contempt citation. On October 29, 1996, there was no noticed motion pending to order production of any documents. ***[Failure of notice provision was failure of due process.]***

4. No evidence was presented to the court regarding the alleged constructive contempt. ***[Judgment or order issued unsuported by evidence is failure of due process.]***

5. The order submitted to the District Court by plaintiff Brunet's attorney was not in consonance with the order from the bench. It contained an order extending to a "any contempt. " ***[Issuing order not conforming to court record, is denial of due process.]***

6. On November 15, 1996 there was no valid judgment on which plaintiff could issue the Joint Debtor Rule or take an Order thereon. ***[Issuing order based on invalid judgment is denial of due process.]***

7. On November 15, 1996, there was no basis for entry of Judgment by District Court of the 24th Judicial District, Parish of Jefferson, regarding the alleged contempt cited by plaintiff for failure of Polaris to appear therein. ***[Issuing order without legal basis is denial of due process.]***

By Order dated October 3, 1997, the Louisiana Supreme Court granted Writs and the case was remanded to the Fifth Circuit Court of Appeals for consideration on the merits pursuant to its supervisory jurisdiction.

On November 19, 1997, Polaris filed their Brief with the Fifth Circuit Court of Appeals and listed the following Assignments of Error:

A. Defendant assigns error in that the Court erred in issuing the Order of sanctions for failure to appear pursuant to Joint Judgment Debtor Rule is void for lack of jurisdiction. ***[Orders issued based on invalid judgment are denial of due process.]***

B. Defendant assigns error in that the Court erred in that the trial court committed error in ruling that the insurance code of the State of Louisiana requires a non-admitted insurer that issues a policy of marine insurance to post security by authority of LA -R. S. 22:1245 and 1255. ***[State Court's disregard of state law is denial of due process.]***

C. Defendant assigns error in that the adverse presumptions are not supported by the law and are in violation of the Constitution of the United States. ***[Orders issued without legal basis are denial of due process.]***

D. Defendant assigns error in that the Court erred in the Motion to Strike Polaris' Pleadings and to Order Polaris to Post Security was decided in consideration of a Memorandum and Exhibits thereto that were ineffective in that the Memorandum was improperly served and the exhibits were not served. ***[Lack of timely service of moving papers is denial of due process.]***

On March 11, 1998, the Fifth Circuit Court of Appeals reversed in part and affirmed in part the ruling of the trial court. Polaris applied for Writs to the Supreme Court of the State of Louisiana. Polaris' Writs were denied by the Louisiana Supreme Court on May 29, 1998. Subsequent thereto and on August 27,

1998, Polaris filed a Petition for Writ of Certiorari with the Supreme Court of the United States.

VI POLARIS HAS RAISED FEDERAL QUESTIONS BELOW IN THE FORM OF DEINALS OF DUE PROCESS

Thus, Polaris' Brief does state federal questions were sought to be raised in any lower court, including the matter of due process as respects to orders relating to discovery and evidentiary rulings against Polaris for failure to comply with Court Orders resulting in sanctions resulting the Court granting adverse presumptions against Polaris.

Respondents claim that the matters raised byPolaris do not involve any Constitutional issues is incorrect. There are federal questions timely and properly raised at all stages of the proceedings below and this Court has jurisdiction to review this Judgment on a Writ of Certiorari. Polaris complies with Supreme Court Rule 14(g)(i) setting forth these matters with reference to the orders below. Polaris also complied with Supreme Court Rule 14(4).

VII PENDANT JURISDICTION

Respondents admit that the petitioner has clearly stated at least one ground that directly states due process of law as the federal question. This court may review all other matters under its pendant jurisdiction. That particular issue was raised only by the Fifth Circuit Court of Appeal in citing in its opinion State of Louisiana In the Interest of J.B., No. 86-C-319.

VIII MATTERS OF DISCRETION

Supreme Court Rule 10 does permit this court to grant certiorari when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. The errors herein are a matter of law. Polaris has stated its request for relief in the nature of error in the courts below as is typical of most briefs, however the substance of those assignments are essentially denials of due process going to the jurisdiction over the subject matter, the person, lack of notice, fair hearing, ursupation of legislative powers and utter disregard of black letter law. Said errors are so gross that they shock the conscience and should be reviewed by this highest court. This court is the only protection which a litigant has from the parochialism of some jurisdictions.

Insurance and litigation are part of the business of doing business. Without state recognition of that important relationship the business of doing business is threatened. Pg. 6, application for writ.

> "1. Marine Marketing does apply because the statutory exception is in the jurisdictional section of Part XXVII. It was clearly intended to limit the executive, judicial power and the power of the others who are the subject or the object of the several sections. The finding that 22:1255 only concerns access to the courts is absurd. Litigation is part of doing business as much as is selling or other facets of the modern enterprise. Find one successful enterprise without a stable of lawyers, both corporate and litigation. Two necessities common to all of today's business are insurance and lawyers."

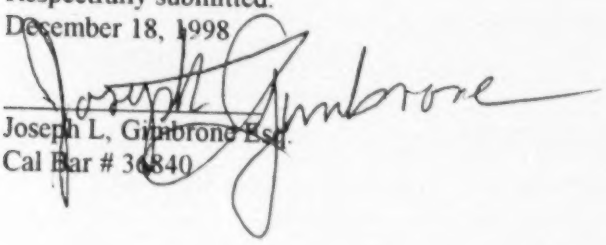
IX RESPONDENTS' BRIEF IS UNSIGNED, NO CERTIFICATE OF SERVICE WAS SERVED UPON PETITIONER

Respodents have either failed to sign their Brief In Opposition or have failed to serve Petitioner a signed copy thereof. Nor have respondents served Petitioner a copy of their proof of service in accordance with Rule 10. Polaris objects thereto.

X CONCLUSION

Based on the foregoing it is respectfully submitted that this Honorable Court accept review of this Writ of Certioari and order a full briefing thereon.

Respectfully submitted.
December 18, 1998



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